

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
FRANK P. NASK AND FRANCES T. NASK	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1983.	:	

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Petitioners, Frank P. Nask, 10 Mountain Avenue, West Orange, New Jersey 07052, and Frances T. Nask, 8 Piccadilly Court, Newburgh, New York 12550, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1983 (File Nos. 802736 and 803414).

A hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 22, 1987 at 1:15 P.M. Petitioners appeared by Paul R. Murphy, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner Frank P. Nask was domiciled in, and a resident of, the State of New York during the year 1983.

FINDINGS OF FACT

1. Frank P. Nask and Frances T. Nask (hereinafter "petitioners") filed a New York State resident income tax return for 1983. Said return, which was signed by both petitioners, was filed under filing status "Married filing separately on separate forms". The pre-printed address label affixed to the return reported petitioners' address as 8 Piccadilly Court, Newburgh, New York 12550. The return reported only the income of Mrs. Nask. Mr. Nask's income was claimed as an adjustment to income on the basis that he lived and worked outside of New York State for the entire year 1983.

2. On June 15, 1984, petitioners filed a second New York State resident income tax return

for 1983. This return, which was also signed by both petitioners, was filed under filing status "Married filing separately on one return". The handwritten address thereon was identical to that on the previous return. This return also omitted Mr. Nask's income earned outside the State of New York.

3. On September 19, 1985, the Audit Division sent petitioners a statement wherein Mr. Nask's income was held subject to New York State personal income tax based on the following explanation:

"Removal from New York State for a temporary or limited period of employment does not constitute a permanent change in New York domicile and the person retains the same status he had prior to such removal.

In order (to) effect a change of New York domicile, a person must acquire a new domicile in a new location outside of New York State with the intention of making this place his permanent home. The information submitted does not substantiate a change of domicile from New York State for the tax year 1983.

You have been allowed a resident credit for taxes paid to Maryland and Pennsylvania and your tax liability is recomputed below".

4. According to the aforesaid recomputation, Mr. Nask's liability for New York State personal income tax was \$1,584.80 and Mrs. Nask's liability for New York State personal income tax was \$77.86.

5. On November 1, 1985, the Audit Division issued a Notice of Deficiency against petitioners<sup>1</sup> for 1983 asserting personal income tax of \$77.86 plus interest of \$13.03, for a total due of \$90.89.

6. On June 4, 1986, the Audit Division issued a Statement of Audit Changes to Mr. Nask wherein his total income was held taxable to New York State. The explanation provided thereon was virtually the same as that provided in the Audit Division's letter of September 19, 1985. Accordingly, a Notice of Deficiency was issued against Mr. Nask under the same date asserting personal income tax of \$1,584.80, plus interest of \$366.70, for a total due of \$1,951.50.

7. At a prehearing conference, Mr. Nask's 1983 personal income tax liability was reduced from \$1,584.80 to \$1,463.80. Said reduction was attributable to the allowance of an additional

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<sup>1</sup>Although this Notice of Deficiency was issued against both Mr. and Mrs. Nask, the deficiency asserted thereon relates solely to Mrs. Nask.

personal exemption.

8. Mr. Nask was born and raised in New York. In 1969 he was married to petitioner Frances T. Nask. Subsequent to their marriage, they jointly purchased a house in Newburgh, New York.

9. On December 14, 1982, Mr. Nask was hired by the Hospital Corporation of America ("HCA") specifically to fulfill HCA's management contract with Monsour Medical Center ("Monsour") in Jeanette, Pennsylvania. HCA's commitment to Monsour was for a three-year period during which Mr. Nask was to be Monsour's Chief Fiscal Officer.

10. Mr. Nask rented a one-bedroom apartment in Pennsylvania during the period he worked at Monsour. His wife and children remained in New York.

11. The option of moving his entire family to Pennsylvania was considered for about one month. However, due to marital problems, he opted instead to negotiate a separation from his wife and ultimately obtain a divorce. In March 1984, their separation was finalized and on July 8, 1985 they were divorced.

12. Prior to the completion of Mr. Nask's assignment at Monsour, HCA cancelled that management contract, promoted Mr. Nask, and, on September 1, 1983, transferred him to HCA's district office in Columbia, Maryland.

13. On December 27, 1983, Mr. Nask purchased a condominium in Columbia, Maryland. His wife and children continued to reside in New York during the remainder of 1983.

14. At the time Mr. Nask commenced his employment with HCA, his long range goal was to eventually relocate to the west coast.

15. Mr. Nask spent approximately 12 days in New York during 1983 for the purpose of visiting his children.

16. Mr. Nask filed income tax returns with the States of Pennsylvania and Maryland during 1983. He filed said returns indicating that he was a resident of Pennsylvania from January 1983 to August 1983 and a resident of Maryland from September 1, 1983 to

December 31, 1983. The deficiency asserted against Mr. Nask allowed a full resident tax credit for the income taxes paid to both Pennsylvania and Maryland.

17. Documents and letters submitted by Mr. Nask reveal a contradiction with respect to his intentions of moving his family. In his letter received July 16, 1985, he stated that his intent was to move his family to Pennsylvania and Maryland, respectively, upon his transfer to each of said states. However, in his perfected petition received December 15, 1986, he made statements to the effect that except for about one month after his employment with HCA, he had no intention of moving his family to the aforesaid states.

#### SUMMARY OF PETITIONERS' POSITION

18. Petitioner Frank P. Nask alleged that he was a nonresident of New York State since:

- (a) he did not live or work in New York during any part of the year 1983;
- (b) after his removal from New York he had no intention of returning;
- (c) his transfers were permanent in nature; and
- (d) he became a bona fide resident of Pennsylvania in December 1982, and

subsequently, he became a bona fide resident of Maryland on September 1, 1983.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 102.2(d)(2) provides that:

"A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time."

B. That the burden of proof is upon petitioner Frank P. Nask to show that the necessary intention to effect a change in domicile existed (Tax Law § 689[e]).

C. That Mr. Nask's long-range goal was to relocate to the west coast. This, coupled with the fact that at least his Pennsylvania employment was for a limited time, leads to the conclusion that he remained a domiciliary of New York State during 1983.

D. That Tax Law § 605(a) provides that:

"A resident individual means an individual:

(1) who is domiciled in this state, unless (A) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state...."

E. That Mr. Nask has failed to sustain his burden of proof, imposed pursuant to Tax Law § 689(e), to show that he met the requirements provided in Tax Law § 605(a)(1)(A), specifically, petitioner continued to maintain the house in Newburgh as joint owner with his wife for the entire year 1983. Accordingly, Mr. Nask is deemed to have been a resident individual of the State of New York during the entire year 1983.

F. That the Notice of Deficiency issued November 1, 1985 is to be cancelled with respect to Mr. Nask (see Finding of Fact "5", supra); that the Notice of Deficiency issued against Mr. Nask on June 4, 1986 is reduced to \$1,463.80 plus interest (see Finding of Fact "7", supra); that the Audit Division is directed to modify the aforesaid notices of deficiency accordingly; and that, except as so granted, the petition of Frank P. Nask and Frances T. Nask is in all other respects denied.

DATED: Albany, New York  
December 18, 1987

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ADMINISTRATIVE LAW JUDGE